

STATE OF SOUTH CAROLINA)
)
COUNTY OF ABBEVILLE)

IN THE COURT OF COMMON PLEAS

Margaret Cade,)
)
Plaintiff,)

v.)

Town of Calhoun Falls, SC; John Waller,)
Mayor, in his official and individual)
capacities; Ernest Baskin, Superintendent)
of Sanitation, in his official and individual)
capacities; Any and all Town Official who)
may be liable in this matter,)

Defendants.)

C/A No: 2017-CP-01-216

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STATE OF SOUTH CAROLINA

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SC Court of Appeals

ORDER

This matter comes before the Court on the Defendant's Motion to Strike and Dismiss pursuant to Rules 12(b)(2) and (6) as well as Rule 12(f) of the South Carolina Rules of Civil Procedure. Based on the Complaint, Defendants Motion and supporting authorities, the Court hereby grants Defendant's Motions.

Pursuant to Plaintiff's Complaint, this action is brought pursuant to the South Carolina Tort Claims Act, South Carolina Code of Laws, §§ 15-78-10 et seq. Plaintiff's Complaint alleges that Defendant Calhoun Falls through its former Mayor, Defendant John Waller and its Maintenance Supervisor, Defendant Ernest Baskin tortuously and wrongfully charged her for municipal sewer services for her home which she did not receive. Plaintiff repeatedly in her Complaint alleges that such individuals acted within the scope of their official duties as agents of the Town of Calhoun Falls in committing these wrongful acts against Plaintiff. See Complaint

TRUE COPY
BY M Kennedy
ABBEVILLE COUNTY CLERK OF COURT

Paragraphs 2, 3, 4 and 5. While Plaintiff does attempt to allege a cause of action for fraud against these individual Defendants, neither the Complaint nor Plaintiff's Counsel at the hearing on Defendant's Motions could articulate any wrongful act by either individual Defendant that was outside of the scope of their agency or employment by the Town.

Section 15-78-120 (b) of the South Carolina Tort Claims Act provides:

"No award for damages under this chapter shall include punitive or exemplary damages or interest prior to judgment."

Based on this provision of the Tort Claims Act Defendants Motion to Strike Plaintiff's Request for Punitive Damages and pre-judgment interest is granted.

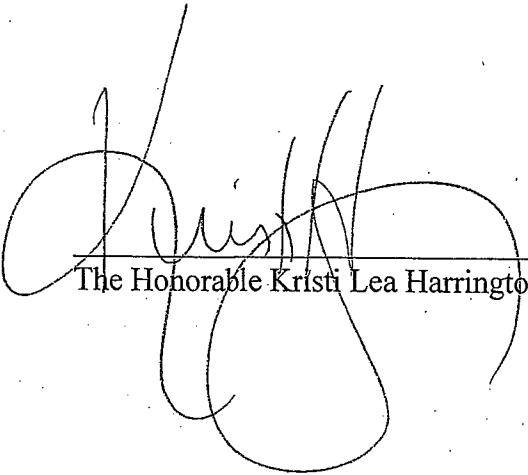
Section 15-78-70(a) and § 15-78-200 of the South Carolina Tort Claims Act provides that the exclusive remedy for any tortious conduct by an employee of a covered entity shall be against the governmental entity and not the employee as long as the employee acted within the scope of his or her official duties. Accordingly, all claims against the individual Defendant's in their official capacities as an elected official of the Town and/or an employee of the Town are dismissed. Moreover, Plaintiff has not alleged nor articulated any act by the individually named Defendants which was outside the scope of their duties as an elected official of the Town or employee of the Town. Accordingly, Plaintiff's claims against the individual Defendants in their individual capacities are hereby dismissed.

At the request of Defendants Counsel and for good cause shown, Defendant Town of Calhoun Falls shall have 20 days from Defendant's receipt of this Order to file a responsive pleading.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant's Motions to Dismiss and Strike are hereby GRANTED.

IT IS SO ORDERED.

April 30, 2018
Abbeville, South Carolina



The Honorable Kristi Lea Harrington